

APPEAL NO. 020436  
FILED APRIL 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 23, 2002. The hearing officer resolved the disputed issues before her by determining (1) that the respondent/cross-appellant's (claimant) compensable injury does not extend to include pancreatitis, post-traumatic stress disorder (PTSD), emphysema, and/or injuries to the head, heart, right shoulder, thoracic spine, or lumbar spine; (2) that the claimant had disability as a result of the injury of \_\_\_\_\_, from March 21, 2001, through October 30, 2001, but not from October 31, 2001, through the date of the hearing; (3) that the employer tendered a bona fide offer of employment (BFOE) to the claimant on July 31, 2001, and September 13, 2001; and (4) that the Texas Workers' Compensation Commission (Commission) abused its discretion in approving Dr. M as the claimant's alternate treating doctor. The appellant/cross-respondent (carrier) appealed the hearing officer's determination that the claimant had disability from March 21, 2001, through October 30, 2001, asserting that the claimant's disability ended no later than September 13, 2001. The claimant's response urges affirmance. The claimant appealed the hearing officer's determinations as to the extent of the injury; the period of disability; that the employer tendered a BFOE; and that the Commission abused its discretion in approving Dr. M as the claimant's alternate treating doctor. The carrier responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable liver, lung, pelvis, right arm, spleen, and bilateral rib injury on \_\_\_\_\_. The claimant testified that the injury occurred when he fell into the railroad car transfer pit and he was squeezed between the transfer table and the cement wall. It is undisputed that the claimant was very seriously injured.

The issues of whether the claimant's compensable injury included pancreatitis, PTSD, emphysema, and/or injuries to the head, heart, right shoulder, thoracic spine, or lumbar spine, and for what period of time the claimant had disability were questions of fact for the hearing officer. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). While we affirm the hearing officer's determination that the injury does not extend to include PTSD because that was the specific diagnosis before her and that determination is supported by some

evidence, we specifically note that the broader questions of whether the claimant sustained a mental trauma injury or whether he has some other psychological injury as a result of the compensable injury were not before the hearing officer and have not been resolved. The carrier's assertion that disability ended no later than September 13, 2001, due to the tendering of a BFOE is legally incorrect. The existence of a BFOE does not end disability. It merely allows the carrier to deem the wages offered by the employer to be post-injury earnings.

The hearing officer did not err in determining that the employer tendered a BFOE to the claimant on July 31, 2001, and September 13, 2001. After reviewing the two offers in evidence, we conclude that they both comply with the technical requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6). On appeal, the claimant argues that the offers were defective because they were not based on releases from the claimant's treating doctor. There was conflicting evidence presented with regard to that issue. Based upon the record in this case, Dr. M was not approved as the claimant's treating doctor by the Commission until after both BFOEs were tendered. Prior to that time, it appears that the claimant's care was being managed by Dr. P. Both offers were based on Dr. P's restrictions. Additionally, even if we were to determine that Dr. P was not the claimant's treating doctor at the time the offers were made, Rule 129.6(b) provides that in the absence of a work status report from the treating doctor an offer of employment may be made based upon another doctor's assessment provided there has been an actual physical examination. Accordingly, the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

The hearing officer did not err in determining that the Commission abused its discretion in approving Dr. M as the claimant's alternate treating doctor. The Appeals Panel applies an abuse of discretion standard in reviewing cases regarding requests to change treating doctors. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996. In determining whether the hearing officer has abused his or her discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Appeal No. 951943; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). In reviewing the Commission's actions in approving a request to change treating doctors, the hearing officer also looks to see whether the Commission has abused its discretion. The hearing officer determined that the claimant changed treating doctors to obtain a new medical report taking him off work and some evidence supports the hearing officer's determination in that regard. As such, we find no abuse of discretion by the hearing officer in her resolution of the change of treating doctor issue.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **WAUSAU UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICK KNIGHT  
105 DECKER COURT, SUITE 600  
IRVING, TEXAS 75062.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge